

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Miskovski	Team: Squad #3	CCRB Case #: 202002102	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday 03/12/2020 10:25 PM	18 Mo. SOL 09-12-2021	EO SOL 04-29-2022	Location of Incident: In front of 2053 Bedford Avenue		Precinct: 67
Date/Time CV Reported Fri, 03/13/2020 10:42 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/13/2020 10:42 AM		

Complainant/Victim	Type	Home Address
1. P [REDACTED] B [REDACTED]	Comp/Victim	[REDACTED] Fenimore Street Apt. [REDACTED] Brooklyn NY 11225
2. T [REDACTED] B [REDACTED]	Victim	[REDACTED] Fenimore Street Apt. [REDACTED] Brooklyn NY 11225

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Joseph Bautista	00113	954534	INT CIS
2. PO S [REDACTED] R [REDACTED]	[REDACTED]	[REDACTED]	INT CIS
3. SGT D [REDACTED] G [REDACTED]	[REDACTED]	[REDACTED]	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A . SGT D [REDACTED] G [REDACTED]	Abuse of Authority: Sergeant D [REDACTED] G [REDACTED] stopped the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.	A . Exonerated
B . PO S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.	B . Exonerated
C . DT3 Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista stopped the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.	C . Exonerated
D . PO S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] frisked T [REDACTED] B [REDACTED]	D . Exonerated
E . PO S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched T [REDACTED] B [REDACTED]	E . Exonerated
F . DT3 Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista frisked P [REDACTED] B [REDACTED]	F . Exonerated
G . DT3 Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista searched P [REDACTED] B [REDACTED]	G . Unfounded
H . PO S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.	H . Exonerated
I . DT3 Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista searched the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.	I . Exonerated
J . PO S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] seized T [REDACTED] B [REDACTED] property.	J . Unsubstantiated
K . SGT D [REDACTED] G [REDACTED]	Abuse of Authority: Sergeant D [REDACTED] G [REDACTED] failed to provide T [REDACTED] B [REDACTED] with a business card.	K . Substantiated
L . PO S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] failed to provide T [REDACTED] B [REDACTED] with a business card.	L . Substantiated

Officer(s)	Allegation	Investigator Recommendation
M . DT3 Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista failed to provide T ■ B ■ with a business card.	M . Substantiated
N . SGT D ■ G ■	Abuse of Authority: Sergeant D ■ G ■ failed to provide P ■ B ■ with a business card.	N . Substantiated
O . PO S ■ R ■	Abuse of Authority: Police Officer S ■ R ■ failed to provide F ■ B ■ with a business card.	O . Substantiated
P . DT3 Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista failed to provide F ■ B ■ with a business card.	P . Substantiated
Q . SGT D ■ G ■	Other Possible Misconduct Noted: Sergeant D ■ G ■ improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	Q . Other Possible Misconduct
R . PO S ■ R ■	Other Possible Misconduct Noted: Police Officer S ■ R ■ improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	R . Other Possible Misconduct
S . DT3 Joseph Bautista	Other Possible Misconduct Noted: Detective Joseph Bautista improperly used his body-worn camera according to Patrol Guide Procedure 212-123.	S . Other Possible Misconduct

Case Summary

On March 13, 2020, P [REDACTED] B [REDACTED] filed this complaint with the CCRB via phone on behalf of herself and her son, T [REDACTED] B [REDACTED]. The case was originally assigned to former Investigator Zev Carter and was subsequently reassigned to the undersigned investigator.

On March 12, 2020, at approximately 10:20 p.m., Mr. B [REDACTED] was driving along Bedford Avenue between Lenox Road and Clarkson Avenue in Brooklyn, with Ms. B [REDACTED] in the front passenger seat. Once they reached the area near [REDACTED] Bedford Avenue, Police Officer Joseph Bautista, Police Officer S [REDACTED] R [REDACTED] and Sergeant D [REDACTED] G [REDACTED] all of the 67th Precinct Field Intelligence Team, who were in their unmarked police vehicle, stopped the vehicle with Mr. and Ms. B [REDACTED] (**Allegation A-C: Abuse of Authority, exonerated**). Mr. B [REDACTED] stopped the vehicle and the officers approached. PO R [REDACTED] asked Mr. B [REDACTED] for his driver's license and registration, and Mr. B [REDACTED] provided it to PO R [REDACTED]. PO R [REDACTED] asked Mr. B [REDACTED] to exit the vehicle and patted Mr. B [REDACTED] legs down and searched his front pants pockets (**Allegations D and E: Abuse of Authority, exonerated**). PO Bautista asked Ms. B [REDACTED] to step out of the vehicle, patted her waist down and allegedly requested that she empty her pockets (**Allegations F and G: Abuse of Authority, exonerated, unfounded**). PO R [REDACTED] and PO Bautista then searched the car and the trunk (**Allegations H-I: Abuse of Authority, exonerated**). The officers let Mr. and Ms. B [REDACTED] go with a warning. PO R [REDACTED] allegedly never returned Mr. B [REDACTED] driver's license to him after releasing him (**Allegation J: Abuse of Authority, unsubstantiated**). None of the officers provided Mr. and Ms. B [REDACTED] with their business cards (**Allegations K-P: Abuse of Authority, substantiated**). No arrests were made or summonses issued as a result of this incident.

The investigation received body-worn camera (BWC) footage from PO R [REDACTED] PO Bautista and Sgt. G [REDACTED] (**BR 01**). However, the officers failed to active their BWC when they initiated the stop (**Allegations Q-S: Other Possible Misconduct, other possible misconduct noted**).

PO Bautista has since been promoted to a detective.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant D [REDACTED] G [REDACTED] stopped the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.

Allegation (B) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.

Allegation (C) Abuse of Authority: Police Officer Joseph Bautista stopped the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.

In her CCRB interview, Ms. B [REDACTED] stated that Mr. B [REDACTED] was driving her home from her job on the incident night (**BR 02**). Ms. B [REDACTED] was sitting in the front passenger seat of their blue Nissan Maxima with New York state license plates. She stated that the car windows appear dark and tinted at night, but they are not illegally tinted. Mr. B [REDACTED] was driving within the relative speed limit the entire way home from Bedford Avenue in Brooklyn to its intersection with Lenox Avenue. Mr. and Ms. B [REDACTED] noticed a black Dodge Charger that appeared to be following them, so once they reached a supermarket at 2036 Bedford Avenue, Mr. B [REDACTED] pulled off to the side of the road across from the supermarket to allow the car to pass. The car did not pass, stopped behind their vehicle, and PO R [REDACTED] PO Bautista, and Sgt. G [REDACTED] exited it. PO R [REDACTED] approached the driver side, PO Bautista approached the passenger side, while Sgt. G [REDACTED] waited at the rear of the vehicle. PO R [REDACTED] asked Mr. B [REDACTED] for his driver's license and registration, and he provided them. Mr. B [REDACTED] asked PO R [REDACTED] why they had been stopped, and PO R [REDACTED] responded that he had been

driving at 40 miles per hour in the 25 miles per hour zone.

In his CCRB interview, Mr. B [REDACTED] provided a consistent statement with Ms. B [REDACTED] (BR 03). However, he admitted that he was “probably driving a little bit over the speed limit,” but not up to 40 miles per hour to his knowledge. Mr. B [REDACTED] also saw PO R [REDACTED] scan Mr. B [REDACTED] driver’s license with his phone once he provided it to PO R [REDACTED]. PO R [REDACTED] asked for the keys to the vehicle and Mr. B [REDACTED] provided them. Mr. B [REDACTED] did not know anything about tinting on the windows.

In his CCRB interview, PO R [REDACTED] testified that while he was operating his vehicle, he witnessed Mr. B [REDACTED] speeding and driving in a car with tinting on the windows (BR 04). PO R [REDACTED] could not recall how the police vehicle was positioned when he first noticed the vehicle. He did not recall exactly how fast the vehicle was observed to be traveling. He did not recall what the speed limit was in the area where he first saw the car, but noted that if it was not posted, it would have been 25 miles per hour in New York City. He did not recall where PO Bautista and Sgt. G [REDACTED] were sitting in the police vehicle. He did not recall whose decision it was to stop Mr. B [REDACTED]. He did not recall if he had any conversation with the other officers about the car stop before it took place. PO R [REDACTED] stopped Mr. and Ms. B [REDACTED] but did not recall how he stopped their vehicle. PO R [REDACTED] went to the driver’s side, while Sgt. Greico was by the passenger side, and PO Bautista stood by the driver side in the rear. PO R [REDACTED] could not see inside the car due to the dark windows, so he asked that they be rolled down. He did not recall if he requested Mr. B [REDACTED] documentation but noted that he usually requests the name or driver’s license of the driver.

In his CCRB statement, PO Bautista noted that he was sitting in the rear of the patrol vehicle, behind PO R [REDACTED]. He did not recall what brought his attention to Mr. B [REDACTED] vehicle (BR 05). He did not recall observing the vehicle speeding or having excessive tints prior to it being stopped. PO Bautista did not recall which officer made the decision to stop the vehicle or whether there was a conversation about the vehicle amongst the officers prior to it being stopped. Once the officers stopped the vehicle, PO R [REDACTED] approached the driver with PO Bautista behind him and Sgt. Greico approached the passenger. He did not remember if PO R [REDACTED] ever asked Mr. B [REDACTED] for his driver’s license.

In his CCRB interview, Sgt. G [REDACTED] stated that he did not remember the incident and could only explain what he remembered from his review of his BWC footage (BR 06). He did not recall who first observed Mr. and Ms. B [REDACTED] vehicle. He could not recall if the windows had an illegal level of tinting nor which windows were allegedly tinted. He noted that it was moving “quick” and “well over 30” but did not elaborate further. Sgt. G [REDACTED] was unsure as to whose decision it was to stop the vehicle or whether it was his own. He was unsure if he had any conversation with PO R [REDACTED] or PO Bautista before the car was stopped. He explained that in his notes that he prepared for his CCRB interview, he wrote that the window tinting was the reason for the stop. Once the vehicle was stopped, he approached the passenger side while PO R [REDACTED] and PO Bautista were somewhere near the driver side.

The BWC footage does not show the moments preceding the stop (BR 01). The footage begins once the officers instruct Mr. B [REDACTED] to step out of the vehicle.

The New York State (NYS) Department of Motor Vehicles cites NYS Vehicle and Traffic Law Section 375(12-a) to say that it is illegal in NYS for window tinting to block more than 30% of light (BR 21). According to NYS Vehicle and Traffic Law Article 30 Section 1180(d), drivers must obey and not exceed posted speed limits (BR 22).

Since Ms. B [REDACTED] acknowledged that the windows appeared to have tinting, especially in the dark of night, and since Mr. B [REDACTED] acknowledged driving above the speed limit, the investigation credits the officers’ testimonies that they noticed the tinted windows and the speeding, both of which are Vehicle and Traffic Law (VTL) violations. As such, the investigation finds that the officers did not commit misconduct in initiating the vehicle stop for the VTL violations. It is therefore recommended that **Allegations A-C** be closed as *exonerated*.

Allegation (D) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] frisked T [REDACTED] B [REDACTED]
Allegation (E) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched T [REDACTED] B [REDACTED]
Allegation (F) Abuse of Authority: Police Officer Joseph Bautista frisked P [REDACTED] E [REDACTED]
Allegation (G) Abuse of Authority: Police Officer Joseph Bautista searched P [REDACTED] E [REDACTED]
Allegation (H) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.
Allegation (I) Abuse of Authority: Police Officer Joseph Bautista searched the vehicle in which P [REDACTED] B [REDACTED] and T [REDACTED] B [REDACTED] were occupants.

In her CCRB interview, Ms. B [REDACTED] stated that once the officers took Mr. B [REDACTED] identification, PO R [REDACTED] and PO Bautista returned to the vehicle (BR 02). PO R [REDACTED] ordered Mr. B [REDACTED] out of the vehicle, and Mr. B [REDACTED] complied. PO R [REDACTED] told Mr. B [REDACTED] to spread his legs and began to pat his legs. PO R [REDACTED] reached his hands into Mr. B [REDACTED] front sweatpants pockets. He did not remove anything from these pockets. PO Bautista then ordered Ms. B [REDACTED] out of the vehicle, and she complied as well. PO Bautista told her to empty her coat pockets, and she removed her work identification and a pair of spare keys. PO Bautista told her she was fine and to stand at the rear of the vehicle with Sgt. G [REDACTED] and Mr. B [REDACTED]. While the three stood at the rear, PO R [REDACTED] and PO Bautista searched the front and rear seats of the car. Ms. B [REDACTED] heard the sound of the center console and the glove compartment close. Once the officers finished, they ordered Mr. and Ms. B [REDACTED] back into the vehicle. As they walked, PO R [REDACTED] opened the trunk of the vehicle and appeared to search it with PO Bautista. After a total time of approximately 20 minutes, the officers finished their search and returned to speak with Mr. and Ms. B [REDACTED].

In his CCRB interview, Mr. B [REDACTED] provided a statement consistent with Ms. B [REDACTED] (BR 03). The only difference in his testimony is that he did not see PO Bautista tell Ms. B [REDACTED] to empty her pockets.

In his CCRB interview, PO R [REDACTED] stated that as soon as he approached Mr. B [REDACTED] on the driver side of the vehicle, he smelled an odor of marijuana (BR 04). PO R [REDACTED] could not remember if the odor was of burnt or unburnt marijuana. PO R [REDACTED] asked Mr. B [REDACTED] if he had any marijuana on his person, and Mr. B [REDACTED] responded that he had a small amount of it on him. PO R [REDACTED] instructed Mr. B [REDACTED] to step out of the vehicle, and as the latter complied, he informed PO R [REDACTED] that he had the marijuana in his pocket. PO R [REDACTED] did not remember which pocket. PO R [REDACTED] acknowledged that he patted down and searched Mr. B [REDACTED] for possible extra marijuana, but he could not remember where he frisked and searched him on his body. He remembered finding a “very tiny” amount of marijuana. He did not see PO Bautista pat down or search Ms. B [REDACTED]. Since Mr. B [REDACTED] had marijuana on his person, PO R [REDACTED] believed that there could also be marijuana within his car and believed that there had to be an amount inside the vehicle that caused the odor that he noticed. PO R [REDACTED] stated that he had encountered many occasions when someone who had been smoking a marijuana cigarette also had a larger quantity of marijuana within their vehicle. PO Bautista began to search the vehicle while PO R [REDACTED] escorted Mr. B [REDACTED] to the rear of the vehicle where Ms. B [REDACTED] stood with Sgt. G [REDACTED]. PO R [REDACTED] then joined PO Bautista and searched the driver side of the vehicle in front and back while PO Bautista did the same for the passenger side. PO R [REDACTED] found marijuana crumbs on the floor of the vehicle but did not recover any marijuana inside of the vehicle. PO Bautista did not find any either. PO Bautista and PO R [REDACTED] then searched the trunk of the vehicle and did not find marijuana there as well. PO R [REDACTED] directed Mr. and Ms. B [REDACTED] back to their seats. He did not see Sgt. G [REDACTED] search any part of the vehicle. PO R [REDACTED] could not provide a number of arrests he had made for marijuana possession but noted that he had been in well over 100 situations when marijuana was in a vehicle or on someone’s person during nearly eight years of his employment as a police officer. PO R [REDACTED] received training regarding identifying the smell of marijuana at the police academy and regarding field testing of marijuana.

PO Bautista provided a statement consistent with PO Rizzo’s (BR 05). He also noticed the

odor of marijuana, distinguishing that it smelled like burnt marijuana smoke when he approached the front of the vehicle. PO Bautista saw that once PO R████ directed Mr. B████ out of the vehicle, he (PO R████) patted Mr. B████ legs down. PO Bautista did not recall seeing PO R████ enter any of Mr. B████ pockets. As PO R████ walked with Mr. B████ to the rear of the vehicle, PO Bautista approached Ms. B████ at the front passenger side. PO Bautista ordered her out of the vehicle and frisked her due to the odor of marijuana along the exterior of all her clothing. He was unsure if he entered any of her pockets but noted that it could have been possible. He did not find anything on her person. PO Bautista escorted her to the rear of the vehicle where Sgt. G████ stood. PO Bautista then searched the front and rear passenger sides of the vehicle for marijuana. He only found marijuana crumbs in the rear passenger area. He and PO R████ searched the trunk but did not find any marijuana therein. He did not see Sgt. G████ search any part of the vehicle.

In his CCRB testimony, Sgt. G████ stated that he had trouble remembering the specifics of this part of the incident (**BR 06**). He recalled that at some point he noticed the odor of burnt marijuana from the vehicle as he stood alongside it. He noted that he had been involved with thousands of stops for marijuana during his tenure. He did not recall either PO R████ or PO Bautista patting down or searching either of Mr. and Ms. B████. Sgt. G████ did not search the vehicle himself; however, he remembered that PO R████ and PO Bautista searched the vehicles but did not recall the specific areas. He also believed that the two officers search the trunk of the car.

PO Rizzo's and PO Bautista's BWC footage best capture the allegations. In PO Rizzo's BWC footage, located in IA #138, shows the initial interaction (**BR 01**). At 00:30, while Mr. B████ exits the vehicle, PO R████ asks him, "You got any marijuana on you? Even a little bit?" Mr. B████ responds, "Yes." PO R████ replies, "Yeah, I smell it. In here?" Mr. B████ clarifies, "Other pocket," while PO R████ stands close to Mr. B████ somewhat obstructing the view of the camera. At 00:55, PO R████ shines his flashlight inside of Mr. B████ jacket pocket. Mr. B████ says, "I don't think you're allowed to go in my pockets, bro." PO R████ tells him that he can do so because Mr. B████ admitted to having marijuana on his person. At 01:03, PO R████ instructs Mr. B████ to spread his legs and pats them down. He directs Mr. B████ to the rear of the vehicle when he finishes. At 02:36, PO R████ walks to the front driver's seat and searches the door compartment and center console, remarking, "There's weed crumbs in here too." At 03:25, he returns to the trunk and instructs Mr. and Ms. B████ to enter the vehicle. From 03:23 to 04:38, he opens the trunk of the vehicle and searches it with PO Bautista.

PO Bautista's BWC footage contained in IA #138 shows the same initial moments as PO Rizzo's BWC footage (**BR 01**). At 00:38, PO R████ can be seen reaching into Mr. B████ front left jacket pocket and removing Mr. B████ keys. At 01:18, PO Bautista walks to the front passenger side of the vehicle and asks Ms. B████ to exit the vehicle. Ms. B████ complies. PO Bautista asks, "Anything in your pockets I got to worry about?" Mr. B████ replies, "Are you guys serious?" Ms. B████ begins to take off her coat but is interrupted by PO Bautista who says that he does not need her to do so and is only looking for weapons or knives. At 01:35, PO Bautista appears to pat down her waist and jacket pockets. He does not appear to enter them. At 01:50, Ms. B████ walks to the rear of the vehicle to stand with Sgt. G████. From 01:54 to 02:39, PO Bautista searches the front passenger seat and area. At 02:42, he walks to the rear passenger seat and searches the pocket and armrest. He exclaims, "Yo there's md nuggets right here." He finishes the search and at 03:45, he searches the trunk with PO R████ until 04:45.

In *People v. Chestnut*, 36 N.Y.2d 917, the court determined that the odor of marijuana smoke during a vehicle stop was sufficient for officers of sufficient training and experience to search the vehicle and its occupants (**BR 07-08**).

NYPD Patrol Guide Procedure Section 212-11 describes the levels of interactions with civilians and their authority to initiate each level at a certain threshold (**BR 09**). A level one encounter is a non-accusatory Request for Information and requires an objective, credible reason to approach a civilian. The Common Law Right of Inquiry is a level two encounter, commonly known as a question, and requires founded suspicion that criminal activity is afoot. A Terry Stop is

a level three encounter and requires reasonable suspicion that a person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. Under the level three stop, officers may frisk the person if the officer has reasonable suspicion that the person is armed and dangerous.

The investigation credits the officers' testimony that there was marijuana within the vehicle because they were all consistent in testifying about the odor of marijuana and Mr. B█████ admitted in the BWC footage that he had some marijuana, despite Mr. B█████ and Ms. B█████ not testifying about having marijuana during their interviews. The amount of marijuana crumbs and nuggets are unknown since they are not clearly visible in the footage. However, the investigation credits the officers' training and experience to identify the odor of the marijuana that was admittedly in the vehicle and on Mr. B█████ person. Since the court established that the search is lawful due to the odor of marijuana, PO R█████ was allowed to reach Mr. B█████ pockets, as seen on the BWC footage. Furthermore, since the Patrol Guide establishes that a frisk is a lower level of interaction than a search, the frisk is permitted by extension as well. PO Rizzo's search of the vehicle due to the odor of marijuana was also permissible under the precedent at the time of the incident set by *Chestnut*. The investigation thus finds that PO R█████ did not commit misconduct by frisking and searching Mr. Burell and searching his vehicle. It is therefore recommended that **Allegations D, E, and H** be closed as *exonerated*.

As for PO Bautista's actions, the BWC footage establishes that he did not instruct Ms. B█████ to empty her jacket pockets and actually told her that the removal of her jacket was unnecessary. Though PO Bautista himself was unsure if he searched Ms. B█████ the BWC footage confirms that he instead patted Ms. B█████ down during the course of his interaction with her. Since PO Bautista did not search Ms. B█████ it is therefore recommended that **Allegation G** be closed as *unfounded*.

As mentioned above, the investigation credits the officers' testimonies about the presence of marijuana. Since a frisk is a lower level of interaction than a search in the Patrol Guide, and since PO Bautista was permitted to search Ms. B█████ the investigation has established by a preponderance of the evidence that PO Bautista did not commit misconduct by frisking Ms. Burell. It is therefore recommended that **Allegations F and I** be closed as *exonerated*.

Allegation (J) Abuse of Authority: Police Officer S█████ R█████ seized T█████ B█████ property.

In her CCRB interview, Ms. B█████ stated that when the officers originally stopped the vehicle, PO R█████ asked Mr. B█████ for his driver's license and Mr. B█████ provided it (**BR 02**). PO R█████ then handed it to PO Bautista who walked back to the police vehicle and stayed there while PO R█████ ordered Mr. B█████ out of the vehicle and patted him down. Later, once the officers finished the vehicle search, PO R█████ returned to speak with Mr. and Ms. B█████ who were already inside of the vehicle. He told them that Mr. B█████ had an open warrant from 2015 and explained that it was for possession of a knife. The officers then let them leave the location. Later that evening, Mr. B█████ told Ms. B█████ that he was missing his driver's license and that PO R█████ must have never returned it. Mr. and Ms. B█████ drove around their neighborhood looking for PO R█████ vehicle, eventually finding it at the 67th Precinct stationhouse. Ms. B█████ walked up to PO R█████ who was standing in the parking lot. She explained that he had not returned Mr. B█████ driver's license. PO R█████ informed her that he had indeed given it back to them and entered the stationhouse.

In his CCRB statement, Mr. B█████ stated that he gave PO R█████ his driver's license when stopped (**BR 03**). PO R█████ appeared to scan the driver's license with his department phone. PO R█████ then asked for the car keys and Mr. B█████ provided them as well. Then PO R█████ ordered Mr. B█████ out of the vehicle, searched him and the vehicle, as stated in the above allegations. Once the incident concluded, PO Bautista approached the driver's side of the vehicle and told Mr.

B [REDACTED] that he had an open warrant from 2015 for possession of a knife. The officers then told Mr. B [REDACTED] he was free to leave. Once he returned to his apartment, he noticed that his driver's license was missing and drove back to the incident location to find the officers. Mr. B [REDACTED] found the officers near the 67th Precinct stationhouse and told PO R [REDACTED] that he had not returned his driver's license. PO R [REDACTED] insisted that he had done so and went inside the stationhouse.

A warrant audit search revealed that on March 12, 2020, at 10:19 p.m., PO Bautista conducted two warrant audits: one with Mr. B [REDACTED] name and date of birth and one with his driver's license plate number (**BR 10**).

In his CCRB interview, PO R [REDACTED] stated he did not recall if he asked for Mr. B [REDACTED] driver's license (**BR 04**). PO R [REDACTED] explained that he sometimes asks individuals for their names and other times for their driver's licenses. When they do not have a driver's license, PO R [REDACTED] checks their names and dates of birth in the department phone. He did not perform any searches for Mr. B [REDACTED] but noted that PO Bautista performed a search for both Ms. and Mr. B [REDACTED]. He did not recall how PO Bautista received their information. PO R [REDACTED] stated that once he finished the car stop, he provided Mr. B [REDACTED] his car keys and let him go with a warning. PO R [REDACTED] did not recall having Mr. B [REDACTED] driver's license in his possession.

In his CCRB interview, PO Bautista stated he did not recall witnessing PO R [REDACTED] request Mr. B [REDACTED] driver's license or whether PO R [REDACTED] had Mr. B [REDACTED] driver's license in his possession at any point in the incident (**BR 05**). PO Bautista believed that he conducted a search of Mr. B [REDACTED] and Ms. B [REDACTED] names during the incident. The investigation showed PO Bautista the warrant audit results, but PO Bautista was unsure how he learned Mr. B [REDACTED] name and date of birth. He believed that he could have received the information from Ms. B [REDACTED]. When the incident concluded, the officers issued a warning and admonishment to Mr. and Ms. B [REDACTED] and allowed them to leave. PO Bautista did not recall if PO R [REDACTED] ever had Mr. B [REDACTED] driver's license to return in the first place.

In his CCRB interview, Sgt. G [REDACTED] stated he did not believe that he ever witnessed PO R [REDACTED] request Mr. B [REDACTED] driver's license (**BR 06**). He saw PO R [REDACTED] hand something to Mr. B [REDACTED] at the end of the incident, believing that the items were the keys to the car. Sgt. G [REDACTED] did not see PO R [REDACTED] seize or keep Mr. B [REDACTED] driver's license.

None of the BWC footage captures the initial moments of the stop or any initial conversation nor do the videos capture the very end of the stop either (**BR 01**). All of the BWC footage begins when PO R [REDACTED] instructs Mr. B [REDACTED] to exit the vehicle (**BR 01**). PO Bautista's BWC footage does not show him conducting the warrant audit (**BR 01**). As previously referenced, PO Bautista's BWC footage shows that at 00:38 seconds, PO R [REDACTED] removes Mr. B [REDACTED] keys from his jacket pocket. At no point in any of the footage is a driver's license visible in any of the officers' hands. In PO Rizzo's BWC footage at 00:48, when he is frisking Mr. B [REDACTED] he asks Mr. B [REDACTED] where he lives, and Mr. B [REDACTED] responds with his address (**BR 01**). In Sgt. Grieco's BWC footage, located in IA #138, at 02:34, while he stands at the rear of the vehicle with Mr. and Ms. B [REDACTED] he asks Mr. B [REDACTED] for his exact address. Mr. B [REDACTED] looks at something in his hands that appears to be a wallet. Later, at the end of the incident, at 04:46, PO R [REDACTED] can be seen handing Mr. B [REDACTED] his keys and tells him, "Listen, let me tell you something," but the video cuts off (**BR 01**). None of the footage shows officers returning to their car to conduct the warrant audit.

Due to the conflicting testimony between Mr. and Ms. B [REDACTED] and the officers, the investigation is unable to determine if PO R [REDACTED] had Mr. B [REDACTED] driver's license in his possession at any point in the incident. Video evidence showed that PO R [REDACTED] and Sgt. G [REDACTED] both asked for Mr. B [REDACTED] address, which would have been on the driver's license that he provided to them. Furthermore, PO Bautista ran the warrant audit, which according to PO R [REDACTED] is usually done when a civilian cannot produce a driver's license. Due to the conflicting factors and the fact that BWC footage does not cover the entire stop, especially the beginning and ending, the investigation is unable to determine if PO R [REDACTED] acquired Mr. B [REDACTED] driver's license and failed to return it. It is therefore recommended that **Allegation J** be closed as *unsubstantiated*.

Allegation (K) Abuse of Authority: Sergeant D. G. failed to provide T. B. with a business card.

Allegation (L) Abuse of Authority: Police Officer S. R. failed to provide T. B. with a business card.

Allegation (M) Abuse of Authority: Police Officer Joseph Bautista failed to provide T. B. with a business card.

Allegation (N) Abuse of Authority: Sergeant D. G. failed to provide P. B. with a business card.

Allegation (O) Abuse of Authority: Police Officer S. R. failed to provide P. B. with a business card.

Allegation (P) Abuse of Authority: Police Officer S. R. failed to provide P. B. with a business card.

It is undisputed that Sgt. G. PO R. and PO Bautista did not provide their business cards to Mr. and Ms. B. at the conclusion of the vehicle stop. It is undisputed that the officers did not arrest nor issue a summons to Mr. and Ms. B. as a result of this car stop.

In her interview, Ms. B. stated that once the officers finished the car stop and let them leave, the officers did not provide any business cards (BR 02). Mr. B. gave a statement consistent with Ms. B. (BR 03).

In his CCRB interview, Sgt. G. stated that he did not provide a business card because he was not required to provide a business card during this incident since business cards are given for “level three stops or below” (BR 06). He stated that a probable cause stop is “level 4,” and does not require officers to provide a business card. Since this incident was a “level 4” encounter, he was not required to provide a business card. When asked if officers are required to give business cards in any other situations, Sgt. G. replied that they should also be given if someone requests a business card.

In his CCRB interview, PO R. stated that Mr. and Ms. B. did not request business cards. PO R. clarified that he did not provide one since he had probable cause in a “level 4” interaction and was not required to provide one (BR 04).

In his CCRB interview, PO Bautista stated that he did not provide a business card because there was probable cause to search the vehicle during this incident, and as such, he did not think it was necessary to provide business cards to Mr. B. or Ms. B. (BR 05).

According to the New York City Administrative Code 14-174 officers must provide a business card at the conclusion of a search of “persons or property, including vehicles” that contains their “name, rank, and command,” whether handwritten or pre-printed (BR 11). NYPD Patrol Guide Procedure 203-09 states that an officer must “offer member of the public a generic Right to Know Business Card—general with identification information written down legibly, if supply of pre-printed Right to Know Business Cards becomes depleted (e.g., awaiting new supply of pre-printed Right to Know Business Cards, etc.), upon conclusion of law enforcement activities,” also noting that a law enforcement activity includes searches of vehicles (BR 12). Both the New York City Administrative Code 14-174 and NYPD Patrol Guide Procedure 203-09 note that the business card must be offered “except in cases when a summons is issued or an arrest is made, or exigent circumstances are present (i.e., physical resistance, flight, imminent danger of physical injury or damage to property, or other factors make such procedure impractical),” (BR 11-12).

NYPD Patrol Guide Procedure 202-09 instructs commanding officers that they must ensure proper performance of the functions designated for the command and frequently test the knowledge of members of the command regarding their duties and responsibilities (BR 20).

Since the officers did not issue a summons to Mr. and Ms. B. after stopping and searching the vehicle, the Administrative Code and the Patrol Guide require that the PO R. and PO Bautista provide business cards to Mr. and Ms. B. because they engaged in vehicle search

and a search of Mr. B [REDACTED]. Furthermore, since the officers had time to finish the stop with a warning and admonishment, as previously established, there were no exigent circumstances that required them to leave immediately without the opportunity to provide business cards. Though Sgt. G [REDACTED] did not engage in the search of the vehicle, he was the commanding officer present, and as referenced in the Patrol Guide, he was responsible for the conduct and duties of PO Bautista and PO R [REDACTED]. Thus, while the search was justified, the officers were required to provide Mr. and Ms. B [REDACTED] their business cards since they were the occupants of the vehicle that was searched, and it was Sgt. Grieco's duty to ensure adherence to the protocol. Though the officers cited probable cause, the Patrol Guide explicitly states that the search of a vehicle requires a business card. As such, based on the preponderance of the evidence, the investigation has determined that the officers committed misconduct by not providing business cards to Mr. and Ms. B [REDACTED]. It is therefore recommended that **Allegations K-P** be closed as *substantiated*.

Allegation (Q) Other Possible Misconduct: Sergeant D [REDACTED] G [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (R) Other Possible Misconduct: Police Officer S [REDACTED] R [REDACTED] improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

Allegation (S) Other Possible Misconduct: Police Officer Joseph Bautista improperly used his body-worn camera according to Patrol Guide Procedure 212-123.

The BWC footage from Sgt. G [REDACTED] PO R [REDACTED] and PO Bautista begins once PO R [REDACTED] instructs Mr. B [REDACTED] to step outside of the vehicle, and none of the footage captures preceding moments and how the stop was initiated (**BR 01**). Patrol Guide Procedure 212-123 states that officers must activate their BWC during vehicle stops (**BR 23**). Sgt. G [REDACTED] PO R [REDACTED] and PO Bautista did not activate their BWCs at the onset of the stop, therefore, it is recommended that **Allegations Q-S** result in **Other Possible Misconduct Noted**.

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which Ms. B [REDACTED] and Mr. B [REDACTED] have been parties (**BR 13-14**).
- Sgt. G [REDACTED] has been a member of service for 16 years and has been named a subject in 43 other CCRB complaints and 126 other allegations, of which 12 have been substantiated:
 - Case 201111996 involved a substantiated allegation of a premises entered and/or searched against Sgt. G [REDACTED]. The Board recommended Command Discipline, and the NYPD imposed Instructions.
 - Case 201207718 involved a substantiated allegation of a stop against Sgt. G [REDACTED]. The Board recommended Charges, and the NYPD forfeited one vacation day from Sgt. G [REDACTED].
 - Case 201405351 involved a substantiated allegation of premises entered and/or searched against Sgt. G [REDACTED]. The Board recommended Charges and Specifications. Sgt. G [REDACTED] was found not guilty at trial, and no discipline was imposed.
 - Case 201800398 involved substantiated allegations of a vehicle stop, a vehicle search, a search of person, and a threat of summons against Sgt. G [REDACTED]. The Board recommended Charges, and the NYPD forfeited 10 vacation days from Sgt. G [REDACTED].
 - Case 201901422 involved a substantiated allegation of a threat of force against Sgt. G [REDACTED]. The Board recommended Formalized Training, and the NYPD imposed Instructions.
 - Case 201903162 involved four substantiated allegations of supervising improper arrests against Sgt. G [REDACTED]. The Board recommended Formalized training, and the NYPD imposed the recommended training.
 - Case 201908868 involved substantiated allegations of an entry and a search of premises

- Six allegations of a vehicle stop have been pleaded against Sgt. G [REDACTED]. Specifically, they were alleged in case 200714398, which closed as complainant unavailable, case 201209434, which closed as unsubstantiated, case 201709960, which closed as unsubstantiated, case 201800398, which closed as substantiated, and cases 202005785 and 202100673 that are currently under investigation.
- PO R [REDACTED] has been a member of service for eight years and has been named a subject in eight other CCRB complaints and 32 allegations, none of which were substantiated.
 - Five allegations of a vehicle search have been pleaded against PO R [REDACTED]. Specifically, they were alleged in case 201903474, which was closed as mediation attempted, and cases 202000690, 202001998 (two allegations), and 202006527 that are currently under investigation.
 - Two allegations of a frisk have been pleaded against PO R [REDACTED]. Specifically, they were alleged in case 202002134 and case 202000690, which is currently under investigation.
- PO Bautista has been a member of service for eight years and has been named a subject in either other CCRB complaints and 23 allegations, none of which were substantiated.
 - Two allegations of a frisk have been pleaded against PO Bautista. Specifically, they were alleged in cases 202006527 and 202006753 that are currently under investigation.
 - Four allegations of a vehicle search have been pleaded against PO Bautista. Specifically, they were alleged in cases 202000690, 202001998 (twice), and 202006527, all of which are currently under investigation.

- This complaint was not suitable for mediation (**BR 15**).
- On February 16, 2022, a request for Notice of Claim was submitted to the New York City Office of the Comptroller and will be added to the case file upon receipt (**BR 16**).
- According to the Office of Court Administration, Mr. B [REDACTED] and Ms. B [REDACTED] have no history of convictions in New York City (**BR 17-18**).